



Australian Government  
Australian Customs and  
Border Protection Service

PUBLIC FILE 109

**INVESTIGATION INTO THE ALLEGED DUMPING OF  
FORMULATED GLYPHOSATE**

**EXPORTED FROM**

**THE PEOPLE'S REPUBLIC OF CHINA**

**IMPORTER VISIT REPORT**

**CMS TRADE PTY LTD**

**THIS REPORT AND THE VIEWS OR RECOMMENDATIONS CONTAINED  
THEREIN WILL BE REVIEWED BY THE CASE MANAGEMENT TEAM AND  
MAY NOT REFLECT THE FINAL POSITION OF CUSTOMS AND BORDER  
PROTECTION**

April 2012

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## 2 BACKGROUND AND PURPOSE

### 2.1 Background to the current investigation

On 21 December 2011, an application requesting that the Minister for Home Affairs (the Minister) publish a dumping duty notice in respect of fully formulated glyphosate exported to Australia from The People's Republic of China (China), was lodged on behalf of Nufarm Limited (Nufarm) and Accensi Pty Limited (Accensi)<sup>1</sup>, members of the Australian industry manufacturing formulated glyphosate.

The initiation of the investigation was publicised in *The Australian* on 6 February 2012. Australian Customs Dumping Notice No. 2012/05 provides further details of this investigation and is available at [www.customs.gov.au](http://www.customs.gov.au).

Following initiation of the investigation, a search of Customs and Border Protection's import database indicated that CMS Trade Pty Ltd (CMS) had imported formulated glyphosate from China during the investigation period (1 January 2011 to 31 December 2011). CMS was not identified as an importer of formulated glyphosate in the application. Customs and Border Protection wrote to CMS advising the company of the initiation of the investigation; requesting co-operation with the investigation and provided the company with a copy of the importer questionnaire to complete. CMS was also provided with a list of its imports during the investigation period, extracted from Customs and Border Protection's import database, from which 34 shipments had been highlighted for verification.

CMS completed the importer questionnaire, providing details regarding the company, overseas supplier information, imports and expenses. The completed importer questionnaire can be found at **confidential attachment GEN 1**.

### 2.2 Purpose of meeting

The purpose of the visit was to:

- confirm that CMS was an importer of formulated glyphosate from China and examine the relationship between CMS and the exporter/s from which it imported the goods during the investigation period;
- verify information to determine export prices and recommend how export price may be determined under s. 269TAB of the *Customs Act 1901* (the Act);
- establish whether the purchases by CMS, from the exporter/s, were arms length transactions;
- establish post exportation costs incurred with importing formulated glyphosate;
- identify CMS's sales and customers and determine sales volume, selling prices and selling costs; and
- provide the company with an opportunity to discuss any issues it believed relevant to the investigation.

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<sup>1</sup> Unless otherwise specified, Nufarm and Accensi are herein referred to as "the applicants".

### 2.3 Meeting

We advised CMS generally of the investigation process and timeframes.

- The investigation period is 1 January 2011 to 31 December 2011.
- Customs and Border Protection will examine exports to Australia from 1 January 2008 for injury analysis purposes.
- A preliminary affirmative determination (PAD) may be made no earlier than the 60<sup>th</sup> day following the date of initiation of the investigation (being 10 March 2012). Provisional measures may be imposed at the time of the PAD or at any time after the PAD has been made. Customs and Border Protection would not make such a determination until it was satisfied that there appears to be, or that it appears there will be, sufficient grounds for the publication of a dumping duty notice.
- A Statement of Essential Facts will be placed on the public record by 29 May 2012 or such later date as the Minister allows. The Statement of Essential Facts will set out the material findings of fact on which Customs and Border Protection intends to base its recommendations to the Minister. The Statement of Essential Facts will invite interested parties to respond, within 20 days from its release date, to the issues raised. Submissions received in response to the Statement of Essential Facts will be considered when compiling the report and recommendations to the Minister.
- Customs and Border Protection's report to the Minister is due no later than 10 July 2012, unless an extension to the Statement of Essential Facts is approved by the Minister.

We advised CMS that we would prepare a confidential report on the visit, a copy of which would be provided to them at the earliest opportunity to allow the company to review the visit report for accuracy. We also advised that, once finalised, a non-confidential version of this visit report would be prepared in consultation with the company and placed on the public record.

Prior to the meeting we forwarded an agenda to CMS. A copy of the agenda is at **confidential attachment GEN 2**.

CMS was co-operative during the visit and provided documentation as requested.

Present at the meeting were

<b>Company</b>	CMS Trade Pty Ltd
Address	3 Waverley Street Bondi
Telephone no.	02 9369 3055
Fax no.	02 9369 5562
Date	3 April 2012
<b>Present</b>	
CMS Trade	Steve Shiel, General Manager Troy Ferguson, Logistics Manger Israel Leshetz, Chief Financial Officer

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Customs and Border Protection	Tom O'Connor, Manager Operations 1 Edward Macgregor, Supervisor Operations 1 Anthea Hung, Graduate Operations 2
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### 3 THE GOODS

#### 3.1 The goods

##### General description

The good the subject of the application (the goods) is formulated glyphosate. The application specifies that:

*The imported product the subject of this application is formulated glyphosate, a non-selective herbicide, imported in varying strengths of the active glyphosate acid ingredient ("glyphosate technical"). A non selective herbicide is one that controls weeds in all situations.*

Formulated glyphosate products are used for the non-selective control of weeds and are absorbed by the leaves and green tissue of susceptible plants. Translocated throughout the plant, formulated glyphosate based herbicides inhibit a specific enzyme, EPSP synthase, which plants need in order to grow. Without that enzyme, plants are unable to produce other proteins essential to growth, so they yellow and die over the course of several days or weeks.

##### Glyphosate formulations

The application states that in the Australian market the different formulations (of glyphosate) are described according to grams of glyphosate technical per litre or kilogram, whereas on the global market the formulations are commonly described by the percentage of glyphosate technical contained in the formulations on a weight for weight basis. The application contains the following indicative comparison of the glyphosate formulations described by grams per litre / kilogram or percentage basis of glyphosate technical.

Unit of product	Glyphosate content – measured as grams per litre or grams per kilogram	Glyphosate content – measured on a weight per weight basis (expressed as a percentage)
Litre	360	41.6%
Litre	450	50.6%
Litre	570	61.5%
Kilogram	680	75.7%

The application specifies that:

*This application is concerned with imported glyphosate in **all** its fully formulated liquid forms **including** glyphosate 360, glyphosate 450 and glyphosate 570 and the fully formulated dry form including glyphosate 680.*

The applicant's claim that:

- the imported formulated glyphosate products (at varying strengths) have the same end use;
- all formulation strengths are substitutable;
- the imported dry formulation can be substituted for liquid forms; and
- all imported formulations are applied within the approved application rates indicated on the product label, expressed on a litre per hectare basis.

Therefore, at this stage of the investigation, Customs and Border Protection considers that the goods covered by this application, and thus any subsequent investigation, includes formulated glyphosate in any form (That is, not limited to liquid forms) and at any concentration (whether described according to weight of glyphosate technical by volume or percentage of glyphosate technical).

#### Exclusion of certain goods from investigation

The application specifies that it is important to distinguish between formulated glyphosate (the goods) and glyphosate acid, which is the primary ingredient in the manufacture of formulated glyphosate. Glyphosate acid is **not** the subject of the application.

Customs and Border Protection considers that the goods covered by this application, and any subsequent investigation does **not** include glyphosate acid.

### **3.2 Tariff classification**

Formulated glyphosate is classified under the tariff subheading 3808.93.00 (statistical code 48) of Schedule 3 to the *Customs Tariff Act 1995*. The current rate of duty applying to formulated glyphosate imported into Australia from China is 5%.

There are currently no Tariff Concession Orders applicable to the relevant tariff subheadings.

### **3.3 CMS's view on the goods under consideration and 'Like' goods**

#### *3.3.1 Formulation of glyphosate*

CMS agreed with the view of the goods under consideration set out above, and summarised that formulated glyphosate products are used for the non-selective control of weeds and are absorbed by the green tissue of susceptible plants when applied through a liquid spray.

CMS reiterated that glyphosate herbicides are formulated chemical products produced by the combination of glyphosate acid ('glyphosate technical') with other specific chemical additives in particular surfactant<sup>2</sup>,

In summation, the overall product performance of glyphosate herbicide is determined by the relative quantities and quality of glyphosate technical and surfactant and other ingredients used in the formulation and the concentration of the active parent acid.

CMS believe that formulated glyphosate in any form (i.e. not limited to liquid forms) and at any concentration (whether described according to weight of glyphosate technical by volume or percentage of glyphosate technical) should be seen as like goods for the purposes of the investigation on the basis that:

- Glyphosate technical is the dominant active ingredient;
- The production of formulated glyphosate (for both locally produced and imported goods) is a relatively standard process; and
- All glyphosate formulations whether locally produced or imported have the same end use

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<sup>2</sup> Surfactants are chemical compounds that lower the surface tension of a liquid, or that between a liquid and a solid. They are commonly introduced to products to act as a detergent, emulsifier or wetting agent. We understand in the case of formulated glyphosate, surfactants are used to aide the uptake of the herbicide by the plant tissue.



**4 COMPANY BACKGROUND**

**4.1 Company background**

An ASIC company search reflects that CMS Trade Pty Ltd is a privately owned proprietary company, limited by shares, registered in Australia from 29 March 2009. CMS is a wholly owned subsidiary of Koor Inter-Trade Pty Ltd, a privately owned proprietary company, limited by shares registered in Australia from August 1982

Within Koor Inter-Trade Pty Ltd, one division is referred to as 'ag chem' comprising CMS, and the 'Ozcrop' brand being the name affixed to the range of agricultural chemical products that CMS sells in Australia. In accordance with the regulations of the APVMA Ozcrop is also a separately registered entity.

[REDACTED]

[REDACTED]

[REDACTED] [Corporate history and structure]

CMS provided a diagram and summary of the corporate structure of the Koor Trade Group. This is at **confidential attachment Gen 3 and 4**.

**4.2 Commercial operations**

CMS sells approximately 50 different agricultural chemical products (agri-chemicals) in Australia, which are sourced from Australian and overseas producers and branded for sale and marketing purposes by CMS under the company's own 'Ozcrop' brand.

CMS only sells one formulated glyphosate product in Australia. It is a liquid form concentration of 450grams of glyphosate acid per litre. This product is marketed and sold as 'Ozcrop Glyphosate 450'. Ozcrop Glyphosate 450 is sold in liquid form in either 20ltr, 110ltr and 1000ltr containers.

CMS advised that sales of Ozcrop Glyphosate 450 account for approximately [REDACTED] during the investigation period.

From its head office located at Bondi Junction, NSW, CMS manages its product branding, marketing, sales and distribution network. Glyphosate (and other agri-chemicals sold by CMS under the Ozcrop brand) are warehoused [REDACTED] in each state in Australia.

The sales data provided by CMS indicated it sells formulated glyphosate

[REDACTED]

[customers and volume sold]

**4.3 Relationship with suppliers**

CMS claimed that they are not related or affiliated in any way with their suppliers in China. We discovered no evidence that would contradict this representation.

**4.4 Relationships with customers**

CMS advised that it has no interest or affiliation Australian distributors apart from the commercial relationship reflected in the terms of the supply agreement in force between the two entities and the commercial transactions executed pursuant to these terms.

[REDACTED]

[selling agreements]

## 5 IMPORTS

### 5.1 Introduction

Customs and Border Protection's import database indicated that CMS imported [REDACTED] litres glyphosate during the investigation period [REDACTED] APVMA approved [REDACTED] suppliers, [REDACTED]

From the data we extrapolated that imports from [REDACTED]

CMS advised any one shipment may comprise a mixture of Glyphosate 450 and other agri-chemicals. Where other products are included, these products will be part of the sales negotiation between CMS and the supplier and their value fully accounted for in the relevant commercial invoice.

### 5.2 Ordering process, shipment and price

#### 5.2.1 Ordering process

CMS advised that patterns of demand in the Australian glyphosate market is extremely volatile and can fluctuate significantly in parallel to weather patterns and seasonal crop growing periods.

Maintaining an ongoing dialogue directly with the retail stores [REDACTED], CMS orders quantities of glyphosate from Chinese suppliers on an as-needed basis, depending on inventory levels in its warehouses and demand from the stores. Inventory levels are managed in accordance with peak usage periods. A commercial objective is to hold minimal inventories during the off season growing periods with no forward or only small orders during these periods.

Ordering is via email or phone with a purchase order signed to commence the manufacturing process.

#### 5.2.2 Price

CMS advised that it does not enter heads of agreement or other formal arrangements with respect to price with its suppliers. The price per unit (specified in litres) is negotiated for each transaction between CMS and the relevant supplier. We were informed the price fluctuates depending on the demand and other factors not clearly identifiable. In recent years the price fluctuated considerably [REDACTED] more just in time with no large ongoing orders executed.

#### 5.2.3 Shipment

Once produced, the glyphosate is decanted into either IBC's (with 1000 litre volume capacity), 20 Litre drums or 110 Litre drums which are labelled with the Ozcrop Glyphosate 450 label and packed on pallets in 20 foot containers and shipped to Australia. CMS submit that all product packaging is on a 'one way shipment' basis – that is, all drums in which the product is provided are purchased by CMS which does require the return of used drums to the supplier.

CMS informed us that the average timeframe, from the date the order is submitted to the supplier in China to the date the glyphosate is delivered into store at CMS's warehouse, is roughly up to 8 weeks – 4 weeks for production ( including production scheduling) of the product and 4 weeks for exportation and delivery.

CMS advised that the majority of shipments from China are trans-shipped via Singapore. However, CMS confirmed that all transactions were carried out between CMS and the exporter directly and that, to the best of its knowledge, no third party intermediaries or trading agents are involved in these transactions. This is supported by the source import sales documentation verified at the visit (see section 5.3 below).

All sales are negotiated in US Dollars (USD [redacted]). Payment terms are noted on the commercial invoice or purchase order with payment terms [redacted] from the [redacted] bill of lading [redacted]

**5.3 Verification**

Prior to the visit we requested, and CMS supplied, an importer transaction form covering 34 selected shipments. The completed importer transaction form is at **confidential attachment IMP 1**.

We requested that CMS collate copies of the following source documents from the list of purchase orders below for exhibit at the visit to enable verification of seven selected shipments from the total cohort of 34:

[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]

For each selected order, CMS provided us with:

- Purchase order;
- Commercial invoice;
- Packing list;
- Bill of lading;
- Evidence of post importation costs including customs broker and domestic freight invoices; and
- Quality control certificates of analysis provided by supplier to CMS

The source documents are at **confidential attachment IMP 2**.

#### *5.3.1 Initial deficiencies in the spreadsheet*

We asked that CMS to amend its importer transaction form to apportion the importation costs relative to the goods under investigation.

We verified that the amended spreadsheet provided accurately reflected the amount of importation costs and expenses reflected in the commercial invoices for each selected shipment.

#### *5.3.2 Reconciliation to source documents (accuracy)*

From the amended importer spreadsheet we were able to reconcile the shipment number, order number, quantity, price, packing list for the selected shipments with the source documentation provided in relation to each selected shipment.

#### *5.3.3 Proof of payment*

##### *Shipment value*

We requested, and were provided, proof of payment in relation to all seven selected shipments. Following the visit we also requested, and were provided with proof of payment in relation to post importation charges for one of the seven shipments.

For each selected shipment we verified that CMS paid the supplier. We confirmed from bank statement that payment is via international electronic funds transfer. We verified that the amount on the commercial invoice was the price paid and fund transferred by CMS.

##### *Importation costs*

All importation charges relevant to specific purchase orders were incurred by a third-party freight agency who then submitted a commercial invoice to CMS for the total value of costs incurred.

We requested, and were provided with, proof of payment of importation costs for one selected shipment [REDACTED]. We were able to confirm that CMS paid the amount reflected in the commercial invoice to the third-party provider identified on the invoice.

On the basis of the above verification, we are satisfied that the amended transaction spreadsheet is complete, accurate and reliable.

#### 5.4 Importation costs

We calculated the average clearance and into store costs for the seven selected shipments [REDACTED]. Overseas freight and insurance is paid for by the supplier and is not known by CMS. Our working is at **confidential appendix 1**.

#### 5.5 Who is the importer

We noted that CMS:

- submits the purchase order to the supplier;
- is named as the customer on all commercial invoices;
- is named as the consignee on the bill of lading;
- organises customs clearance and delivery of the goods from the wharf to the warehouse; and
- is able to sell the goods after arrival.

We consider CMS was the beneficial owner of the goods at the time of importation and is therefore the importer.

#### 5.6 Who is the exporter?

The Act does not define the exporter. Depending on the circumstances of the exportation of the goods, Customs and Border Protection will generally identify the exporter as:

- a principal in the transaction located in the country of export from where the goods were shipped who gave up responsibility by knowingly placing the goods in the hands of a carrier, courier, forwarding company, or their own vehicle for delivery to Australia; or
- a principal will be a person in the country of export who owns, or who has previously owned, the goods but need not be the owner at the time the goods were shipped.

[REDACTED], Chinese APVMA approved suppliers have been identified from the Customs import database as the suppliers' of the goods which has been exported to Australia from China.

We identified, from the source importation documentation provided by CMS, that:

- CMS submits its purchase order to the APVMA approved manufacturers in China

[REDACTED]  
The APVMA approved suppliers are identified as the supplier in the commercial invoices;

- [REDACTED] The APVMA approved suppliers in China are identified as the supplier in the bills of lading; and

CMS pays the suppliers. [REDACTED]

Subject to further inquiries, we consider the APVMA approved suppliers in China [REDACTED] to be the exporters of the goods as:

- they are located in the country of export;
- knowingly negotiate sales of the goods with CMS; and
- assume responsibility for activities associated with the shipment of the goods from China to Australia.

## 6 AUSTRALIAN MARKET AND SALES

### 6.1 General

#### 6.1.1 History of the Australian glyphosate market

CMS confirmed that glyphosate herbicides were introduced into the Australian market in 1970s; initially supplied by the Monsanto Company who developed, and held a patent over, the glyphosate molecule. Monsanto marketed and sold glyphosate in Australia under the specific proprietary product brand 'Roundup'.

Following the expiration of Monsanto's patent [REDACTED], other entities both within and outside Australia have been legally able to formulate and sell glyphosate in the Australian market. As a result Chinese glyphosate production and global trade has increased significantly.

CMS submitted that glyphosate has become more like a commodity product in Australia, and globally, since the expiration of Monsanto's patent. Hence it is widely available; there are numerous manufacturers and the profit margin when selling this product is very small.

The glyphosate market is logically and directly connected to the agricultural industry and subject to the seasonal fluctuations associated with agricultural enterprises. As such the market for the sale of glyphosate in Australia has volatile and unpredictable patterns of demand and supply which, in turn, greatly impact upon both the volume and the price of glyphosate sold in the market in particular periods.

During Australia's recent drought, CMS stated that formulated glyphosate sales volume dropped significantly between 2007/2008 and 2008/2009 however due to supply issues with glyphosate technical, glyphosate technical prices spiked causing formulated glyphosate prices to spike, however both rapidly declined leaving many with built up inventory losing millions of dollars due to this anomaly.

#### 6.1.2 Current market trends

CMS indicated that the Australian market is dominated by formulated glyphosate with a strength of 450 grams (glyphosate technical) per litre.

However, higher concentrations of glyphosate are becoming increasingly popular in the Australian market. This is because a higher yield of glyphosate technical per litre of product enables the end-user to purchase less glyphosate to achieve the same result as a lower concentrated product.

CMS submit that formulated glyphosate supply significantly exceeds demand in the current Australian glyphosate market. Supply includes both manufactures within Australia and from overseas including China.



These prevalent market forces have led to fierce competition in which motivated sellers of formulated glyphosate to offer increasingly favourable sales terms and incentives.

Due to ease of importing formulated glyphosate and the abundance of supply, CMS informed us many new players have entered the market. They are typically small import operations selling container lots directly to farmers, and or, are farmers importing directly.

#### *'One shipment' drum incentives*

Excluding the small retail packs, glyphosate is sold in 20, 110 and 1000 litre drums. Imported products in 1000 Litre 'IBC' drums are sold, generally, on a 'one shipment' basis, meaning that the importer buys a brand new drum as part of the sale of the glyphosate. [REDACTED]

[REDACTED] [administration of drums]

[REDACTED] [administration of drums]

#### *Sales incentives*

CMS informed us that various sales incentives are offered. Large credit terms are common, but more recently incentives relating to a refund on the invoice price paid if the goods can't be sold.

### **6.2 Australian sales**

CMS sells Glyphosate 450 to [REDACTED]

[REDACTED] [CMS' customers] registered Australian businesses such as Combined Rural Traders (CRT) specialising in, inter alia, rural merchandise, wool, livestock and real estate agency, fertilizer [REDACTED] and financial services.

CMS invoices [REDACTED] the goods [REDACTED] ordered by [REDACTED] retailers.

[REDACTED] [invoicing procedure]

### **6.3 Sales process, price and distribution arrangements**

CMS negotiates sales directly with individual retail businesses. [REDACTED]. Orders are submitted by retailers to CMS on an as-needed basis.

Price is negotiated for each transaction on an [REDACTED].

In most states, CMS's [redacted] warehouses are situated in close proximity to [redacted] goods are collected and moved from the CMS warehouse to [redacted]

CMS advised that it aims to arrange sales of glyphosate so that customers can arrange collection directly from the wharf after customs clearances, by-passing the need for storage. However, this is not always feasible [redacted]

For all sales CMS invoices [redacted] reflecting the negotiated sales price. Invoices were provided showing varying terms of credit [redacted] during the course of the investigation period. Credit terms [redacted]

[redacted] [payment of invoices]

#### 6.4 Rebates and discounts

CMS indicated that it provides [redacted] on the invoice value of all transactions during the investigation period.

As such, [redacted] from the monthly remittance [redacted] to CMS, in the month in which the invoice was raised and received, rather than at the time the invoice is payable.

#### 6.5 Drum muster levy

CMS advised that all products it sells in Australia whether imported or domestically produced in containers with a capacity less than 1000 litres are subject to the nationally administered 'Drum Muster' program.

Drum Muster is an environmental program that facilitates the collection and recycling of cleaned, non-returnable crop-production and on-farm animal health chemical containers<sup>3</sup>.

[redacted] [drum muster participation]

To cover the costs and expenses associated with its participation in the scheme, CMS charges [redacted] a fee of approximately \$0.04 per litre for every sale of glyphosate that is sold in 20 litre [redacted]

<sup>3</sup> Information gleaned from the official Drum Muster website, accessed at <http://www.drummuster.com.au/category.php?id=41> on 17/04/11

### 6.6 Sales verification (accuracy)

As part of its questionnaire response, CMS provided us with a line by line sales list of its sales of Glyphosate 450 for the period from 1 January 2011 to 31 December 2011. see **confidential attachment SALES 1**.

At the visit we requested source documents for the following seven selected invoice numbers:

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

#### 6.5.1 Invoices

CMS provided us with commercial invoices for all selected sales. Copies of these documents are at **confidential attachment SALES 1**.

CMS advised that the date of payment will be the [REDACTED] the month in which the invoice becomes payable (i.e. after the terms of credit period) or the [REDACTED]

We verified that all invoices reflected that the payment due date [REDACTED] of the relevant calendar month following the date on which the invoice became payable, consistent with the above methodology.

The invoice numbers, invoice date, quantity, value and customer reconciled with the information entered in the sales list. We are satisfied that the values in the revised sales list are accurate.

#### 6.5.2 Proof of Payment

We requested proof of payment for all selected invoices. In relation to each invoice we were provided with:

- CMS's bank statements reflecting payments received from the relevant customers during the relevant month; and

- Remittance advice reflecting individual payment in relation to specific invoice numbers from the relevant customer to CMS.

We were able to reconcile the amount paid by the customer for the relevant selected invoice via a remittance list [REDACTED] where its total agreed with the deposit into CMS' bank statement.

For completeness, we were also able to identify that the individual amount included in the remittance advice for each invoice for the particular month was the amount reflected in the corresponding commercial invoice, and the amount entered into the sales list database.

These documents are included in the source documents at **confidential attachment SALES 2**.

We are satisfied that the list is complete and accurate.

**6.7 Upwards verification (completeness)**

We were advised that audited Financial Reports are prepared for [REDACTED] and not individually [REDACTED].

To ascertain the proportion of revenue attributable to CMS's operations, [REDACTED] we also requested, and were provided with copies of the management accounts for each entity for the calendar year ending 31 December 2011. These are at **confidential attachment SALES 3**.

Total	CMS	revenue	is
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

**6.8 Selling, general and administrative expenses (SG&A)**

We were advised that, whilst the commercial operations of [REDACTED] CMS are conducted separately, and accounted for separately, certain administrative tasks relevant to CMS are handled by [REDACTED] CMS.

[REDACTED]

[calculation of the selling general and administration expenses]

**6.9 Profitability of sales and selling price**

For our analysis we calculated the weighted average selling price by month for each size (20ltr, 110ltr and 1000ltr) from the sales list provided. We used the weighted average monthly selling price (net ex warehouse) of glyphosate container size that

best represented the selected consignment and deducted the into store and estimated SG&A expenses as calculated above.

With regard to [REDACTED] CMS and its customers (explained above at 6.4) we consider it appropriate to [REDACTED] to the total invoiced value of each transaction between CMS and the customers during the period of investigation for the purposes of calculating an average selling price. Our calculations of monthly weighted average prices are at **confidential appendix 2**.

We note that shipments of the goods cannot be linked to corresponding domestic sales. As such, to take into account an appropriate lapse of time between date on the commercial invoice and subsequent sale of the goods to the customers, we used the monthly weighted average selling price that was approximately 30 days after the date shown on the commercial invoice to calculate profitability of each shipment.

We calculated the profitability of the seven shipments selected for verification calculating [REDACTED] they [REDACTED] were [REDACTED] sold [REDACTED]

Our working is at **confidential appendix 1**.

#### 6.10 Forward orders

CMS confirmed that it did not have any forward orders. CMS advised that the absence of forward orders was a product of the periodic demand in the Australian glyphosate market.

**7 ARMS LENGTH**

In determining export prices under s. 269TAB(1)(a) of the Act and normal values under s. 269TAC(1) of the Act, the legislation requires that the relevant sales are arms length transactions.

Section 269TAA of the Act outlines the circumstances in which the price paid or payable shall not be treated as arms length. These are where:

- there is any consideration payable for in respect of the goods other than price;
- the price is influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller;
- in the opinion of the Minister, the buyer, or an associate of the buyer, will, directly or indirectly, be reimbursed, be compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price.

Furthermore, where:

- goods are exported to Australia otherwise than by the importer and are purchased by the importer from the exporter (whether before or after exportation) for a particular price; and
- the Minister is satisfied that the importer, whether directly or through an associate or associates, sells those goods in Australia (whether in the condition in which they were imported or otherwise) at a loss;

The Minister may treat the sale of those goods at a loss as indicating that the importer or an associate of the importer will, directly or indirectly, be reimbursed, be compensated or otherwise receive a benefit for, or in respect of, the whole or a part of the price.

We did not find any evidence that suggests that CMS is related, affiliated or otherwise associated with their suppliers of glyphosate. We were satisfied on the basis of the available evidence that price of the goods imported is negotiated between CMS and its suppliers as unrelated entities in a competitive market.

We found no evidence to suggest that there is any consideration, compensation or other form of benefit payable between the parties other than the price as negotiated and reflected in the commercial invoices related to the sale of the goods.

We note that all CMS' formulated glyphosate sales verified as part of the visit, were made [REDACTED]

On the basis of the above, we consider that purchases between CMS and its Chinese suppliers have been made at Arms Length. As such, we recommend that the export price is calculated under section 269TAB(1)(a) of the Act, subject to further enquiries with the exporter.

**8 CAUSATION AND MATERIAL INJURY**

CMS advised that, given the volatility of demand and excess capacity of supply, prices have become fiercely competitive. CMS advised, generally speaking, the degree of price sensitivity in the market was such that sales of glyphosate can be won or lost to competitors over a price variance of \$ [REDACTED].

[REDACTED] [glyphosate performance]

[REDACTED] [glyphosate performance versus price]

[REDACTED] [applicant's position in the Australian market]

[REDACTED] [possible cause of injury to the Australian industry]

In summation, CMS submitted that if injury has been caused to the applicants during the period of investigation, and over the course of the injury analysis period, it is more likely the result of a combination of related factors including, inter alia;

- the applicant's inability to react to the changing market dynamics;
- the highly competitive nature of the Australian glyphosate market; and
- the volatility in the agricultural industry and surplus of glyphosate supply.

**9 UNSUPPRESSED SELLING PRICE**

Unsuppressed selling price and non-injurious price issues are examined at an early stage of an investigation and, where possible and appropriate, preliminary examinations are made during the application consideration period for the purpose of assessing injury and causal link and therefore the appearance of reasonable grounds for the publication of a dumping duty notice.

Customs and Border Protection generally derives the non-injurious price by considering one of the following:

- industry selling prices at a time unaffected by dumping;
- constructed industry prices – industry cost to make and sell plus profit; or
- selling prices of un-dumped imports.

Having calculated the unsuppressed selling price, Customs and Border Protection then calculates a non-injurious price by deducting the costs incurred in getting the goods from the export free on board point (or another point if appropriate) to the relevant level of trade in Australia. The deductions normally include overseas freight, insurance, into-store costs and amounts for importer expenses and profit.

At the time of the visit CMS did not have any comments on the calculation of an unsuppressed selling price. They advised that they will give the issue thought and provide a response at a later date.



**10 GENERAL COMMENTS**

As a caveat to their view on like goods, CMS submitted that there are differences in quality between glyphosate formulated in Australia, and *some* imported fully formulated products. Specifically, some imported glyphosate is thought to be formulated with inferior quality surfactants.

CMS submitted that, to the best of their knowledge, under the regulations set by the Australian Pesticides and Veterinary Medical Authority (APVMA) surfactants used in formulated glyphosate must achieve the APVMA standard [REDACTED].

CMS advised that the surfactant used in the product it imports is [REDACTED] and is regarded as a premium product. CMS provided product labels, and a summary of product specifications, as evidence of the quality specifications of the Ozcrop glyphosate 450. These are at **confidential attachment Gen 6 and 7**.

We were informed that CMS suspects that much of the imported Chinese formulated product entering Australia uses surfactant that falls below this minimum standard and, hence, is far cheaper than higher quality surfactants. Although suspected, CMS indicated that is difficult to confirm these concerns.

CMS believe that the quality (and price) of surfactants and other inert ingredients used in the formulation of glyphosate imported from China should be considered by Customs and Border protection when conducting the investigation.

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**11 RECOMMENDATIONS**

Based on the information available, the goods were exported by [REDACTED] APVMA approved Chinese manufacturers to CMS, and:

- have been exported to Australia otherwise than by the importer;
- appear to have been purchased by the importer from the exporter; and
- the purchases of the goods by the importer were arms length transactions;

Subject to further inquiries with the exporters, we are of the view that the export price should be established under section 269TAB(1)(a) of the Act being the price paid or payable by the importer less any part of the price that represents a charge in respect of transport of the goods or in respect of any other matter arising after exportation.

Using the import information provided we calculated the weighted average export price of the goods under section 269TAB(1)(a) as \$ [REDACTED]

Export price calculations are at **confidential appendix 1**.

**Tom O'Connor**

Manager, Operations 1

**Edward Macgregor,**

Supervisor, Operations 1

<b>12 ATTACHMENTS AND APPENDICES</b>
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Confidential attachment GEN 1	Completed importer questionnaire Part A and B
Confidential attachment GEN 2	Agenda
Confidential attachment GEN 3	Koor Trade group corporate structure diagram
Confidential attachment GEN 4	Summary of background of Koor Trade group
Confidential attachment GEN 5	Quality control information
Confidential attachment GEN 6	Ozcrop Glyphosate 450 product labelling
Confidential attachment GEN 7	Ozgrop Glyphosate 450 product specification summary
Confidential attachment IMP 1	Revised Importer transaction form
Confidential attachment IMP 2	Source documents for selected shipments
Confidential attachment IMP 3	Proof of payment for imports
Confidential attachment SALES 1	Sales list
Confidential attachment SALES 2	Source documents for selected shipments (including proof of payment)
Confidential attachment SALES 3	CIS and CMS management accounts
Confidential appendix 1	Working - Cost to Import and Sell (IMP)